

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Policies and Rules Implementing
the Telephone Disclosure and
Dispute Resolution Act

)
)
) CC Docket No. 93-22
) RM-7990
)


RECEIVED
APR 19 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL

Albert H. Kramer
Robert F. Aldrich
Douglas E. Rosenfeld
KECK, MAHIN & CATE
1201 New York Avenue, N.W.
Penthouse Suite
Washington, D.C. 20005-3919
(202) 789-3400

Attorneys for the American Public
Communications Council

Dated: April 19, 1993


No. of Copies rec'd
List ABCDE
List ABCDE
No. of Copies rec'd

SUMMARY

The TDDRA and the Commission's proposed regulations go a long way toward preventing fraud in the delivery of pay-per-call services to the public. Independent public payphone ("IPP") providers, who also are telephone "subscribers" subject to the TDDRA's protections, have a vital stake in ensuring that fraudulent charges for pay-per-call services are not billed to their payphones. Specifically, APCC believes that much fraud against IPP providers will be eliminated if the Commission adopts regulations which (1) prohibit billing "800" number related pay-per-call charges to an originating line when the line is a payphone; (2) prohibit the billing of collect calls to payphones; and (3) require that bills to payphone operators separately identify charges for "collect" calls and "800" calls. Accordingly, APCC recommends that the Commission adopt the modifications to the proposed regulations as described herein.

TABLE OF CONTENTS

<u>Title</u>	<u>Page</u>
COMMENTS OF THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL.	1
I. ADDITIONAL "800" PAY-PER-CALL SAFEGUARDS SHOULD BE ADOPTED	3
A. The Commission Should Prohibit Charging	

RECEIVED

APR 19 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
) CC Docket No. 93-22
Policies and Rules Implementing) RM-7990
the Telephone Disclosure and)
Dispute Resolution Act)

COMMENTS OF THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL

The American Public Communications Council ("APCC") submits the following comments in response to the Commission's Notice of Proposed Rulemaking and Notice of Inquiry ("Notice") in these proceedings, FCC 93-87, released March 10, 1993.¹

BACKGROUND AND STATEMENT OF INTEREST

APCC is a council of the North American Telecommunications Association ("NATA"), and is made up of more than 200 competitive providers of non-telephone company, or independent public payphones ("IPPs") and other public communications facilities. APCC seeks to promote competitive markets and high standards of service for pay telephones and public communications.

An important problem posed by the use of pay-per-call services at payphones is fraud. Fraud is of major concern to IPP providers for a very simple reason. On the one hand, IPPs, like all payphones, are available for use by any member of the public. An IPP provider therefore has no significant control over who has

¹ The Notice incorporates into this proceeding the petition filed on April 30, 1992 by the National Association of Attorneys General in CC Docket No. 91-65. Accordingly, APCC's comments in this proceeding supplement the initial comments filed by APCC in CC Docket No. 91-65 on July 8, 1992, as well as APCC's July 28, 1992 reply comments in that proceeding.

access to the payphone. On the other hand, unlike local exchange carrier payphones ("LECPPs"), IPP providers are required to interconnect with the public network on essentially the same basis as subscribers who can control access to their telephones; i.e., the IPPs are required to use regular business lines. Thus, IPP providers can be billed for calls that originate at the payphone in the same way as any other subscriber can be billed for calls that originate at its telephone.² This combination of circumstances makes IPP providers particularly vulnerable to fraud. There is virtually no control over who has access to the payphone, yet there is tremendous exposure to being billed for fraudulent calls.

Fraudulent use of pay-per-call and other services accessed by "800" numbers is a matter of particularly serious concern to payphone operators because of the tremendous potential for fraud. The Telephone Disclosure and Dispute Resolution Act ("TDDRA") provides a means for implementing measures to minimize pay-per-call and "800" number related fraud directed at payphone operators. The TDDRA is designed to protect telephone "subscribers" from being billed for charges relating to pay-per-call services. See 47

SUMMARY

APCC's initial comments address the specific issues raised by the Commission regarding (1) additional ways to safeguard against pay-per-call fraud and (2) whether additional information should be required in telephone bills containing pay-per-call charges. APCC believes that much fraud against IPP providers will be eliminated if the Commission adopts regulations which (1) prohibit billing "800" number related pay-per-call charges to an originating line when the line is a payphone; (2) prohibit the billing of

extends to IPPs. It is APCC's position that the Commission's proposed regulations should prohibit the assessing of "800" pay-per-call charges against IPPs.³ As discussed above, fraudulent calls are a serious problem for IPP providers. To avoid such fraud in connection with "900" pay-per-call charges, all "900" calls are blocked from most payphones. However, IPP providers cannot similarly protect themselves from being billed for pay-per-call services obtained through "800" calls. By law, IPP providers must

calls at payphones -- thereby exposing payphone operators to the fraud associated with "collect" calls.⁵

IPP providers frequently are billed for charges associated with pay-per-call services which are accessed through "800" numbers. Such improper billing appears to be happening in numerous ways. When a call is made to a pay-per-call service by dialing an "800" number from an IPP, the telephone company's automated number identification ("ANI") transmits to the carrier the ANI which identifies the particular subscriber line from which the call originates. This automatically provides the pay-per-call ("PPC") provider with a number which can be used to generate a bill for the call. If the service provider reviewed the ANI, it could determine that the call was originating from a payphone because the ANI should include the digits "07", which identify the originating subscriber line as a payphone.

However, it appears that in a great number of cases the PPC provider either does not review the ANI screening digits or disregards their significance. Accordingly, the ANI is used to bill the IPP provider for pay-per-call services which may be activated when the caller dials a digit to indicate that it will "accept" a call from a pay-per-call service. Because the users of a payphone are transient, there really is no way to know if the call ever was "accepted" and, even if it were accepted, it is

⁵ States which, according to APCC's information, prohibit the blocking of incoming calls at payphones include Alabama, Florida, Georgia, Idaho, Indiana, Maryland, Michigan, Nevada, New Hampshire, New Mexico, North Carolina, Pennsylvania, South Carolina, Tennessee, Washington and Wyoming.

certain that it was not accepted by the IPP operator who is ultimately billed for the call.

Another method used to bill PPC services accessed by "800" numbers is to use the ANI to call the caller back. When the computer calls back, it may ask if the caller is willing to "accept" the charges for the call.⁶ A caller intent on defrauding the payphone operator will "accept" the call. As explained above, in many states payphones by law may not be blocked for incoming calls. Even where incoming calls to a payphone are blocked by the payphone operator, these call-backs may result in charges to the IPP. This is so because the computer seeking "acceptance" of the call is sound-activated, and payphones which block incoming calls often will emit a signal when called -- a signal that may be interpreted as an "acceptance" by the pay-per-call service's computers, thus triggering the service and associated charges.

Such billing could be avoided if the PPC provider utilized billed number screening -- a service provided by the telephone companies which lists lines to which collect and third-party calls should not be charged. The PPC providers' apparent failure to check the ANI screening digits or the billed number screening data base results in the charging of additional fraudulent pay-per-call services to IPPs.

⁶ One example of this type of service is available by dialing 1-800-326-6462. Other examples of similar services are available at 1-800-738-2868, 1-800-767-6662, 1-800-959-1628, and 1-800-777-1249.

Moreover, APCC believes that originating payphone lines often are billed for pay-per-call services as third-party and credit card billing. In such cases, the pay-per-call service does not call back the payphone line and the caller is not required to state that it "accepts" the call--two procedures often integral to the charging of "collect" pay-per-call service to IPPs. Still, the effect is the same as a "collect" call, as the IPP is billed for the service as if the payphone's ANI is a credit card number. Further, APCC believes that these types of calls are charged to IPP providers without "validating" the call by reviewing the ANI screening digits, the billed number screening data base, or the calling card validation data base.

To adequately address these problems, APCC proposes that the

to provide that "800" calls not result in "the calling party or the subscriber to the originating line being assessed, by virtue of completing the call, a charge for the call." In APCC's view, the addition of this underscored language to Section 64.1504(a) will help ensure that IPP providers are not charged for illegitimate pay-per-call charges.

Additional mechanisms are needed, however. The law contemplates that a "calling party" will not be subject to charges merely by "completing" a call to a pay-per-call service. Instead, before a party will be liable for charges associated with such a call, the party must take some affirmative action in addition to completing the call. Otherwise, the caller might unwittingly sustain a substantial charge for a telephone call that the caller believed would be free.

Permitting callers to complete a call by doing something in addition to calling a pay-per-call number, however, creates a serious loophole in the TDDRA's protections. In the case of IPPs, as explained above, permitting the caller to "accept" a call fosters rather than prevents fraud in the case of IPPs.

The Commission's regulations should close this serious loophole in the TDDRA's protections with respect to all telephone line subscribers. However, at a minimum the regulations should close the loophole with respect to IPP providers, who are targets of pervasive fraud in the charging of pay-per-call services.

If, as the TDDRA contemplates, a caller is not to be charged for a pay-per-call service in the absence of an agreement to accept

those charges, certainly the owner of a payphone from which the call originates should not be liable merely by virtue of the fact that it owns the payphone. To clarify this critical point under the proposed regulations, APCC suggests that Section 64.1504 be modified to include an additional subparagraph (e), which would prohibit "(e) in the case of public payphones, the originating payphone line being billed in connection with any such call."

B. In Addition, The Commission Should Prohibit "Collect" Charges To Payphones.

A general prohibition against billing pay-per-call charges to IPPs will not entirely prevent fraud in the charging of such calls. Charges for "collect" calls also present a significant fraud problem. As explained above, when pay-per-call services are accessed through "800" numbers, some services call the originating line collect (or may convert the call to a collect call without the caller being aware of it), and then bill pay-per-call charges to the originating IPP line. Section 64.1505 of the regulations, as currently drafted, prohibits the billing of "collect" pay-per-call charges to "subscribers" unless the calling party "accepts" the charges for the call. As explained above, however, a caller intent on defrauding an IPP always will "accept" the charges for such a call. APCC recommends that a second sentence be added to Section 64.1505, stating: "In the case of public payphones, no common carrier shall provide transmission services billed to a payphone line on a collect basis, whether or not the called party has taken affirmative action clearly indicating that it accepts the charges for the collect service."

Finally, the TDDRA provides that the common carrier that assigns a telephone number and offers billing and collection services to a pay-per-call service must "ensure that a subscriber is not billed for pay-per-call services that such carrier knows or reasonably should know was provided in violation of the regulations issued pursuant to title II of the [TDDRA][.]" 47 U.S.C. § 228(d). Section 64.1510 of the proposed regulations in turn provides for the disallowance of prohibited "pay-per-call" charges:

Any common carrier assigning a telephone number to a provider of pay-per-call services and offering billing and collection services to such provider shall . . . ensure that a subscriber is not billed for pay-per-call services that such carrier knows or reasonably should know were provided in violation of the regulations set forth in this subpart . . . (Emphasis supplied.)

APCC's proposal to add Sections 64.1504(e), 64.1504(a) and/or 64.1505 to the regulations would prohibit the billing of pay-per-call charges to public payphone lines. As an additional safeguard, APCC requests that the proposed regulations be amended to include the following sentence at the end of Section 64.1510: "A carrier will be deemed to have known that a pay-per-call service was provided in violation of these regulations if the originating line for the call is a payphone."⁷

⁷ The justification for this provision lies in the fact that telephone companies have access to information screening data bases which indicate whether an originating line is a payphone.

II. ADDITIONAL INFORMATION SHOULD BE INCLUDED IN TELEPHONE BILLS

In paragraph 37 of the Notice, the Commission requests comment on the question of "whether any additional information should be included in telephone bills containing pay-per-call charges."

A. "800" Pay-Per-Call Charges Should Appear On Bills Separate From "Collect" Calls.

To enable payphone providers to monitor compliance with APCC's proposed clarifications prohibiting the billing of pay-per-call charges to public payphone lines, APCC proposes that the Commission require certain billing standards relating to pay-per-call services charged to payphone lines. The fraud problem associated with such charges being billed to IPPs is difficult to monitor because the IPP provider's bill may not show that an "800" number ever was dialed in connection with the telephone call for which the charge has been assessed. APCC understands that bills for "800" pay-per-call charges often list the terminating line number, but not the "800" number that the caller actually dialed. In such cases, it is not possible to determine from the bill when a charge should be attributed to a fraudulent "800" call, and IPP providers may inadvertently pay the fraudulent charges. Compounding this monitoring problem is the fact that "800" pay-per-call charges often are reported on bills as "collect" or even "credit card" calls--thereby making it difficult the the IPP provider to identify the source of the problem.

The TDDRA directs the Commission to adopt regulations which are "necessary" to protect subscribers from "abusive practices"

relating to the billing of pay-per-call charges. 47 U.S.C. § 228(d)(1)(B). To enable IPP providers to prevent pay-per-call service fraud directed against their operations, APCC proposes that the telephone companies be required to provide separate billing statements to IPPs for "800" pay-per-call charges and "collect" calls involving "800" numbers. In the alternative, if separate billing statements for "800" pay-per-call charges and "collect" calls involving "800" numbers are not required, then at a minimum the statements should separately identify such calls on a single statement.

The applicable current regulation, which implements 47 U.S.C. § 228(d)(4)(A)-(C), provides:

Any common carrier assigning a telephone number to a provider of pay-per-call services and offering billing and collection services to such provider shall

* * *

(b) in any billing to telephone subscribers that includes charges for any pay-per-call service or collect call providing audio information service or simultaneous voice conversation service

(1) display any charges for pay-per-call services or collect audiotext services in a part of the bill that is identified as not being related to local and long distance telephone charges;

(2) specify, for each pay-per-call or collect audiotext charge made, the amount of the charge, and the date, time, and duration of the call; and

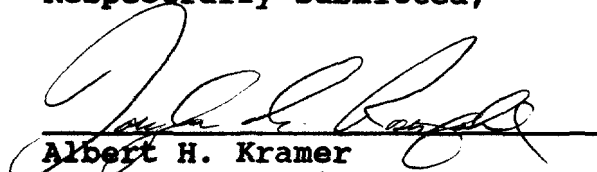
(3) identify the local or toll-free number established in accordance with § 64.1509(b)(1).

Subparagraph (1) provides that the bill must separate local and long distance charges from pay-per-call and collect charges. It does not, though, require that "800" calls be reported as "800" calls when "800" lines are utilized to access pay-per-call service, or when "collect" charges are associated with "800" numbers. Nor are these provisions expressly covered by subparagraphs (2) and (3). Accordingly, APCC recommends that the Commission revise subparagraph (2) to state that the bill shall: "specify, for each pay-per-call or collect audiotext charge made, the amount of the charge, and the date, time, the duration of the call and, when an "800" number is utilized in connection with the call, the identity of any such "800" number(s); . . ."

CONCLUSION

The TDDRA and the Commission's proposed regulations are a substantial step in the direction of preventing pay-per-call service fraud against the public. However, to ensure maximum clarity in the application of the TDDRA's protections to the independent public payphone industry ("IPP"), which is plagued by the type of fraud that the TDDRA was designed to prevent, the American Public Communications Council urges the Commission to adopt the additions and amendments to its proposed regulations described herein.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Albert H. Kramer", is written over a horizontal line.

Albert H. Kramer
Robert F. Aldrich
Douglas E. Rosenfeld

KECK, MAHIN & CATE
1201 New York Avenue, N.W.
Penthouse Suite
Washington, D.C. 20005-3919
(202) 789-3400

Attorneys for the American Public
Communications Council

Dated: April 19, 1993